

No. 25-6177

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**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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Bekham Bahadorani,  
*Petitioner-Appellant*

v.

Pamela Bondi, U.S. Attorney General, et al.,  
*Respondents-Appellees*

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APPEAL FROM DISTRICT COURT ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS

IN THE WESTERN DISTRICT OF OKLAHOMA

IN DISTRICT COURT CASE NO.: 25-CV-1091

BEFORE THE HONORABLE PATRICK R. WYRICK

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**PETITIONER'S OPENING BRIEF**

**BEKHAM BAHADORANI**

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**\*\*ORAL ARGUMENT IS NOT REQUESTED\*\***

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## **RELATED CASES**

The undersigned counsel is aware of no prior or related appeals.

## **GLOSSARY**

1. App.: Appendix
2. App. Doc.: Appellate Document Number
3. DO: Deportation Officer
4. ERO: U.S. Immigration & Customs Enforcement, Enforcement and Removal Operations
5. ERO HQ: ERO Headquarters
6. ICE: U.S. Immigration & Customs Enforcement
7. OOS: Order of Supervision
8. OSC: Order to Show Cause
9. PI: Preliminary Injunction
10. TRO: Temporary Restraining Order

**STATEMENT REGARDING ORAL ARGUMENT**

Petitioner does not request oral argument. Nonetheless, if oral argument is scheduled, the undersigned will appear. If oral argument is scheduled, the undersigned respectfully requests that it be expedited to the soonest possible date in accordance with Petitioner's pending motion to expedite this appeal under 28 U.S.C. § 1657 with reference to 28 U.S.C. § 2241. *See App. Docs. 9, 10.*

## **JURISDICTIONAL STATEMENT**

This Court has jurisdiction over Petitioner’s appeal pursuant to 28 U.S.C. § 1291 because Petitioner appeals from a final decision of the U.S. District Court for the Western District of Oklahoma denying a petition for habeas corpus filed under 28 U.S.C. § 2241. App. 140-52. No certificate of appealability is necessary under 28 U.S.C. § 2253 because the detention complained of does not arise from the judgment of a state court and the final order is not from a proceeding under 28 U.S.C. § 2255.

The district court had subject-matter jurisdiction under 28 U.S.C. §§ 1331, 1361, 1651, 2201, and 2241, and under U.S. Const., Art. I, § 9, cl. 2 (“Suspension Clause”), because Petitioner challenged the legality of his indefinite and prolonged civil post-removal-order immigration detention under *Zadvydas v. Davis*, 533 U.S. 679 (2001), 8 U.S.C. § 1231(a), and 8 C.F.R. §§ 241.4, 241.13.

Final judgment denying the habeas corpus petition was entered by the district court on October 31, 2025. App. 152. An order was filed the same day fully disposing of all claims and motions. The notice of appeal was timely filed on November 4, 2025, within the 60-day timeline imposed by 28 U.S.C. § 2107. App. 153.

### STATEMENT OF ISSUES

1. Whether the district court erred in denying habeas relief where ICE failed to comply with the mandatory procedural safeguards in 8 C.F.R. § 241.13(i)(2)–(3), including providing written notice of revocation and a meaningful opportunity to rebut the alleged “changed circumstances” before re-detention, and where those failures render continued detention unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the regulation itself.
2. Whether the district court erred as a matter of law in holding that violations of § 241.13(i)(2)–(3) were subject to “harmless-error” or “substantial-compliance” review, and in concluding that habeas relief is limited to constitutional violations, contrary to 28 U.S.C. § 2241(c)(3), which authorizes relief for detentions “in violation of the ... laws ... of the United States.”
3. Whether the district court clearly erred in finding that the government had demonstrated a “significant likelihood of removal in the reasonably foreseeable future” and by according undue deference to speculative or unsupported assertions about foreign-relations “judgments” not reflected in the record.

4. Whether the district court abused its discretion or otherwise committed reversible legal error in denying habeas, declaratory, and injunctive relief by relying on speculation that the government could simply redo the revocation process, rather than enforcing compliance with binding regulations and established due-process standards.

## STATEMENT OF THE CASE

### I. Procedural Posture

Petitioner, Behkam Bahadorani, filed a petition for a writ of habeas corpus and concurrently filed a motion for a temporary restraining order (“TRO”) and preliminary injunction (“PI”) on September 21, 2025 alleging that he is being detained in violation of law. *E.g.*, App. 7-30. On October 2, 2025, the Court issued an Order to Show Cause (“OSC”) ordering Respondents to state the true cause of Petitioner’s detention by October 14, 2025. ECF No. 12, 13.<sup>1</sup> Respondents filed their opposition response to the habeas petition on October 14, 2025, explaining why, in their view, Petitioner is lawfully detained. *See* App. 31-100. On October 15, 2025, Petitioner filed his reply. App. 101-108. On October 22, 2025, the Court issued an Order requiring Respondents to file a sur-reply on or before October 27, 2025 “detailing (1) the extent to which Respondents have or have not complied with the procedural requirements of 8 C.F.R. § 241.13(i)(2)-(3), and (2) if Respondents did fail to do so, what the appropriate remedy for such failures ought to be.” ECF No. 17.

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<sup>1</sup> “ECF No.” is a citation to the district court’s docket and is used only when the cited document does not appear in the Appendix.

On October 27, 2025, Respondents filed their sur-reply. *See* App. 109-16. Respondents also supplied new evidence that was not requested by the Court. App. 117-29. The Court then granted Petitioner's motion to file a sur-response on or before October 29, 2025. *See* ECF No. 19. Petitioner filed his sur-response on October 29, 2025. App. 130-39.

The Court issued a decision denying habeas and all other requested relief on October 31, 2025. App. 140-51. Judgment issued the same day. App. 152.

## **II. Relevant Facts**

Petitioner is a citizen of Iran who was ordered removed from the United States on August 3, 2015 by an immigration judge. App. 140. Petitioner did not appeal his order of removal, rendering it administratively final. App. 7.

On August 13, 2015, ERO sent a travel document request to the Iranian Interest Section. App. 97. On August 31, 2015, the Iranian Interest Section sent a letter requesting Petitioner's original passport and birth certificate. App. 97-98. On September 16, 2015, ERO mailed Petitioner's original passport and copy of his birth certificate to the Iranian Interest Section. App. 98. ERO called the Iranian Interest Section on multiple dates requesting the status of the travel documents request. *Id.* On November 15, 2015, ERO received a letter from the Iranian Interest Section stating Petitioner's original birth

certificate was needed to process the travel documents request. *Id.* On November 23, 2015, ERO informed Petitioner that the Iranian Interest Section required his original birth certificate. *Id.* On December 23, 2015, ERO received Petitioner's original birth certificate, which was sent to the Iranian Interest Section. *Id.* On April 20, 2016, ERO received a letter from the Iranian Interest Section stating it was starting the process of verifying Petitioner's Iranian citizenship. *Id.* On June 1, 2016, ERO received a letter from the Iranian Interest Section stating they were still verifying Petitioner's citizenship. *Id.* On August 8, 2016, ERO released Petitioner on an order of supervision ("OOS"). *Id.*

Petitioner alleged in his verified habeas corpus petition that the OOS issued under 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 "because it was determined there was no significant likelihood of removal in the reasonably foreseeable future." *See* App. 8-27, ¶¶ 4, 22, 55, 65-68, 74, 87-90, 98. Despite being ordered to respond to Petitioner's pleadings, Respondents did not deny, and thereby conceded, that "it was [previously] determined there was no significant likelihood of removal in the reasonably foreseeable future" prior to releasing Petitioner's on an OOS in 2016. *See* App. 31-100; Fed. R. Civ. P. 8(b)(6); App. 8-27, ¶ 4, 22, 55, 65-68, 74, 87-90, 98.

On September 12, 2017, ERO called the Iranian Interest Section

seeking an update on the travel documents. App. 98. The Iranian Interest Section told ERO they had never received the original birth certificate, and that ERO could resubmit a travel document request if they wanted to reopen the case. *Id.*

On June 11, 2025, ERO arrested and detained Petitioner, claiming the detention was “for removal based on his final order of removal.” *Id.* On August 5, 2025, DO Aaron Nation finalized a travel document request for Petitioner and sent it to ERO Headquarters to provide to the Iranian government. *Id.* DO Arthur Hawthorne claimed in an affidavit dated October 9, 2025 that Petitioner’s “file contains a copy of his Iranian passport and birth certificate. The Iranian Interest Section has started accepting copies of documents such as passports and birth certificates to establish Iranian citizenship, and they have issued travel documents based on copies when previously they required original documents.” App. 99-100. DO Hawthorne stated his belief that, “[b]ased on Iran’s acceptance of flights, the evidence of [Petitioner]’s citizenship, and the record of acceptance of Iranian citizens to Iran,” Hawthorne “believe[s] removal can be effected in the reasonably foreseeable future.” App. 100.

Respondents submitted a third declaration with their sur-reply, this time from DO Alexander Brown. *See* App. 118-19 (signed on Oct. 24, 2025).

Brown explained that he, a deportation officer, informed Petitioner “that ERO was revoking his order of supervision **because he is a sex offender with an aggravated felony conviction**, and because ERO now has **the possibility** of removing him **to a third country** if Iran does not accept him.” *Id.* (emphasis added).

DO Hawthorne, DO Nation, and DO Brown all failed to claim that a travel document request was ever actually sent to Iran since Petitioner was re-detained on June 11, 2025. App. 97-100, 118-19.

Nation’s declaration admits that Respondents have been unable to deport Petitioner to Iran since at least August 13, 2015. App. 97. Nation’s declaration admits that although Petitioner provided Respondents with an original Iranian birth certificate, that birth certificate was lost or destroyed in a manner that was not Petitioner’s fault. App. 98. Nation’s declaration indicates that the last time a travel document request was attempted, Iran appears to have destroyed a key document, demonstrating a lack of willingness to issue a travel document to Petitioner. *See id.* Nation’s declaration concedes that, historically, it has been Iran’s policy to deny travel document requests for persons who do not have an original Iranian birth certificate. *Id.* Nation claims that, on August 5, 2025, he sent a travel document request to ERO Headquarters to provide to the Iranian government.

*Id.* Nation does not address whether or when, if at all, the travel document request was sent from ERO HQ to Iran. *See App. 97-98.*

Hawthorne's declaration also fails to state whether or when, if at all, the travel document request was sent from ERO HQ to Iran. *See App. 99-100.* Hawthorne's declaration claims that the "Iranian Interest Section has started accepting copies of documents such as passports and birth certificates to establish Iranian citizenship, and they have issued travel documents based on copies when previously they required original documents." *Id.* Hawthorne does not state when this shift occurred, or whether Iran is presently accepting copies in lieu of originals despite recent tensions between the United States and Iran that culminated in the United States bombing Iran's nuclear facilities in Operation Midnight Hammer on June 22, 2025. *See id.*; App. 103 (citing David Vergun, *Defense Agency Contributed Toward Operation Midnight Hammer Success*, U.S. DEPT. OF WAR (July 10, 2025)<sup>2</sup> ("On June 22, 2025, about 125 U.S. military aircraft, including seven B-2 Spirit stealth bombers carrying 14 30,000-pound GBU-57 massive ordnance penetrator bombs and a guided-missile submarine firing Tomahawk missiles, participated in Operation Midnight Hammer, which significantly damaged Iran's three nuclear sites.")). Hawthorne also fails to state whether Iran has accepted any

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<sup>2</sup> *See also* App. 103 at nn. 1-2.

deportee flights since June 22, 2025. *See* App. 99-100.

Even assuming *arguendo* (without any basis in the record for so assuming) that ERO HQ timely sent the travel document request for Petitioner to Iran, that request would have been sent on or around August 5, 2025, or roughly two weeks after the United States bombed Iran's strategic nuclear sites. *See* App. 98. It is exceedingly unlikely, under those circumstances, that Iran is going to assist Respondents in deporting Petitioner by providing Iranian travel documents for Petitioner.

The declarations submitted by Respondents do not address the likelihood of obtaining a travel document, nor when such a document might be expected. App. 97-100, 118-19. The declarations are silent as to whether third country deportation is being attempted, indicating that there is no likelihood of removal in the reasonably foreseeable future to an allegedly safe third country. *Id.* Respondents also fail to state whether Iran has recently denied any travel document requests, or what percentage of travel document requests are actually granted by Iran in recent history. *Id.*

In their filings to the district court, Respondents overemphasized Petitioner's significant criminal history in what appeared to be an attempt to justify his present incarceration, indicating Petitioner's current civil detention is intended to be punitive for past crimes with completed and discharged

sentences. *See* App. 38-39, 57-93, 118-19. Additionally, the nature of Petitioner’s criminal history casts serious doubt on Iran’s willingness to issue a travel document to this specific Iranian even if Iran is otherwise issuing travel documents for other Iranians with no criminal history and/or less significant criminal history.

Petitioner alleged in his verified habeas corpus petition that he did not recall ever having been served with a Notice of Revocation of Release (“Notice”) or otherwise given any sort of informal interview to challenge the Notice or the reasons for his re-detention. App. 17, ¶ 46. Despite being ordered to respond to Petitioner’s allegations, Respondents did not deny and thereby conceded these allegations. *See* Fed. R. Civ. P. 8(b)(6); App. 31-100.

Although Respondents submitted a “Notice to Alien of File Custody Review” (“Custody Review Decision”) in their sur-reply, filed on October 27, 2025, this document is not the Notice of Revocation contemplated by 8 C.F.R. § 241.13(i)(2)-(3) nor the Notice of Revocation contemplated in relevant portions of 8 C.F.R. § 241.4. *See* App. 120-26 (Custody Review Decision). The Custody Review Decision indicates that Petitioner was given a custody review interview on July 30, 2025, or more than a month and a half after Petitioner was re-detained in violation of law. *See* App. 121, 125, 126. It is unclear why the district court erroneously held that this interview occurred a

month earlier on June 30, 2025 “less than three weeks after [Petitioner] was detained.” *See* App. 144.

Petitioner was initially in immigration custody, after having received an order of removal, for 371 days before he was released on an OOS (Aug. 3, 2015 – Aug. 8, 2016). App. 97-98. At the time the district court denied habeas relief, Petitioner was in immigration custody, after having received an order of removal, for an additional 142 days (June 11, 2025 – Oct. 31, 2025). *See id.* As of November 12, 2025, Petitioner’s current length of present confinement is 154 days and growing, for a total of 525 days of post-removal-order civil confinement. *See id.*

### **ARGUMENT SUMMARY**

The district court erred in denying habeas relief. It applied the doctrines of harmless error and substantial compliance to the government's undisputed failure to follow the mandatory procedures in 8 C.F.R. § 241.13(i)(2)–(3). Those regulations condition lawful detention on written notice of revocation, changed circumstances, and an opportunity to respond before custody is reinstated. Treating those requirements as optional nullifies the safeguards that limit executive detention authority and leaves Petitioner confined without the process the law requires.

The court erred factually and legally in sustaining detention on speculation. It assumed that the government could and would take subsequent action if a writ issued and credited unsupported speculative assertions that removal was significantly likely in the foreseeable future. Those findings lack evidentiary support and invert the burden of proof established by the governing regulation. Habeas exists to prevent detention based on conjecture, and the statute authorizes relief for custody in violation of federal law.

Finally, the court denied declaratory relief by invoking deference to alleged foreign-policy judgments that were not part of the record. The petition raised a domestic question of statutory and regulatory compliance, not a diplomatic one. The judgment must be reversed and the writ granted.

## ARGUMENT

### I. Standard of Review

This Court reviews the district court's denial of habeas corpus under 28 U.S.C. § 2241 *de novo*, accepting district court's the factual conclusions unless clearly erroneous. *Riley v. I.N.S.*, 310 F.3d 1253, 1255 (10th Cir. 2002); *Sierra v. INS*, 258 F.3d 1213, 1218 (10th Cir. 2001); *Castleberry v. Alford*, 666 F.2d 1338, 1342 n.2 (10th Cir. 1981). Because Petitioner challenges his detention under 28 U.S.C. § 2241 pursuant to federal process, he does not require a certificate of appealability to proceed. *Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1292 (10th Cir. 2001).

### II. The District Court Erred by Treating ICE's Failure to Comply with 8 C.F.R. § 241.13(i)(2)-(3) as Harmless Error or Substantial Compliance.

The procedural steps in § 241.13(i)(2)-(3) are not aspirational—they are the conditions that permit renewed detention, and ICE's failure to satisfy them removes the statutory basis for custody. When an agency's authority to detain depends on compliance with express regulatory safeguards, post-hoc excuses like harmless error or substantial compliance have no legal relevance.

The district court did not cite a single case indicating that the doctrines of substantial compliance or harmless error apply in habeas corpus proceedings of the sort filed by Petitioner. The overwhelming weight of authority indicates such doctrines are wholly inapplicable. *See, e.g., Baccei v.*

*United States*, 632 F.3d 1140, 1145 (9th Cir. 2011) (“**the doctrine of substantial compliance can have no application in the context of a clear statutory prerequisite that is known to the party seeking to apply the doctrine.**”) (emphasis added) (quoting *Sawyer v. Sonoma County*, 719 F.2d 1001, 1008 (9th Cir. 1983)); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agencies are required to follow their own regulations); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.”); *Constantinovici v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2898985, at \*6 (S.D. Cal. Oct. 10, 2025) (“It is well-established that government agencies are required to follow their own regulations.”); *United States v. Ramos*, 623 F.3d 672, 683 (9th Cir. 2010) (“It is a well-known maxim that agencies must comply with their own regulations.”) (quoting *Ramon-Sepulveda v. INS*, 743 F.2d 1307, 1310 (9th Cir. 1984)); *Sanchez v. Barr*, 919 F.3d 1193, 1196 (9th Cir. 2019) (“A court’s duty to enforce an agency regulation is most evident when compliance with the regulation is mandated by the Constitution or federal law.”) (Paez, J., concurring) (quoting *United States v. Caceres*, 440 U.S. 741, 749 (1979)); *Rokhfirooz v. Larose*, No.: 25-cv-2053-RSH-VET, 2025 WL 2646165, at \*4 (S.D. Cal. Sept. 15,

2025) (“where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered”); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387–88 (D. Mass. Nov. 8, 2017) (holding that ICE’s failures to follow the revocation procedures in § 241.4 rendered the petitioner's detention unlawful); *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. May 2, 2025) (“because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release”); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) (recommending habeas relief based on a variety of regulatory violations similar to those presented by Petitioner), *report and recommendation adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025).

As the cases string-cited above demonstrate, substantial compliance is insufficient when fundamental liberty interests are at stake. The regulations explicitly require a formal Notice of Revocation of Release and a prompt informal interview, creating mandatory procedural safeguards. Petitioner denied receiving either proper notice or an adequate interview. App. 17-18.

Though DO Brown verbally informed Petitioner that he was being re-detained because of his pre-existing criminal history that led to his ultimate removal order, and because a third country deportation was now “possible” if

Iran refused to accept Petitioner, DO Brown did **not** inform Petitioner that changed circumstances were alleged to exist making deportation to Iran significantly likely to occur in the reasonably foreseeable future. App. 118-19. At the time Petitioner was given his informal interview on July 30, 2025, he still had no understanding of why the government had chosen to re-detain him. *See* App. 17-18, ¶¶ 47-54; App. 120-26. As was recently noted by a judge in the District of Minnesota:

Here, the notice to Roble provided that “ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in [his] case” and that “[s]ince being released, removal from the U.S. is now significantly likely in the reasonably foreseeable future. Based on changed circumstances in [his] case [he] will be brought back into ICE custody.” ECF No. 8-10 at 1.

**Besides merely parroting the regulatory text governing re-detention, ICE's notice to Roble provides zero reasons as to *what* changed circumstances exist such that Roble's removal is now significantly likely in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2). The notice does not state, for example, that ICE had received or was seeking a travel document for Roble. *See Chavez Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at \*6 (S.D. Fla. Aug. 8, 2025); *Tran v. Baker*, No. 1:25-cv-01598-JRR, 2025 WL 2085020, at \*4–5 (D. Md. July 24, 2025). Nor does the notice state—as the Government now asserts a month after Roble was detained—that ICE was attempting to find a third country to accept Roble. ECF No. 8 ¶ 25. **Rather, the notice summarily asserts that changed circumstances render Roble's removal from the U.S. significantly likely in the reasonably foreseeable future. ECF No. 8-10 at 1. That language is not individualized to Roble; in fact, it applies to *any* noncitizen detained under 8 C.F.R. § 241.13(i)(2), since the notice****

**simply mirrors the legal standard applicable to detaining a noncitizen released on an Order of Supervision. Providing a notice that simply recites the language of the regulation does not satisfy the Government's obligation to provide the "reasons" why Roble's Order of Supervision was revoked.** 8 C.F.R. § 241.13(i)(3); *see Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), ECF No. 9 at 5 (D. Minn. June 17, 2025) (recommending habeas relief when ICE similarly provided a notice that only parroted the regulatory text).

**That conclusion makes good sense here. The essence of due process is notice and an opportunity to respond.** *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); *Baldwin v. Hale*, 68 U.S. 223, 233, 1 Wall. 223, 17 L.Ed. 531 (1863) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence."). **Indeed, DHS's own regulations contemplate that a noncitizen will have an opportunity to "respond to the reasons for revocation stated in the notification" during the initial informal interview after re-detention.** 8 C.F.R. § 241.13(i)(3). **But Roble cannot be expected to "respond to the reasons for revocation stated in the notification" if the notification does not actually state any reasons for revocation. Not only does this scenario border on the Kafkaesque; it is also contrary to law.** Because ICE violated its own regulations when it detained Roble without notifying him of the reasons why he was being detained, Roble is entitled to habeas relief.

*Roble v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2443453, at \*3 (D. Minn. Aug. 25, 2025) (bold emphasis added; italics as original).

The situation presented in Petitioner's case is even more Kafkaesque than that presented in *Roble* because Roble at least received a *written* decision.

Regardless, Roble's and Petitioner's notifications as to the reasons for their redetention (to the extent Petitioner can be said to have received such a Notice, if at all) are both deficient for the same reason. That is, both simply parrot the regulatory text while failing to give the noncitizen enough information to meaningfully respond to the reasons for redetention during an informal interview.

As the record demonstrates, Respondents have failed utterly to comply with 8 C.F.R. § 241.13. Characterizing Respondents' actions as "substantially compliant" requires redefining both "substantially" and "compliant."

**III. The District Court's Factual and Legal Findings Concerning "Significant Likelihood of Removal in the Reasonably Foreseeable Future" Lack Evidentiary Support.**

The district court made a clearly erroneous finding of fact in holding that the "government has... provided convincing evidence that potential for removal exceeds the 'no significant likelihood' standard." App. 145. The district court based its finding on the mistaken claim that the government "sent a request for travel documents to the appropriate Iranian authorities in order to begin the process of removal." *Id.* (citing App. 40). The government never claimed to send any travel document request to Iran. *See* App. 40, 97-100, 118-19. Instead, the government stated that, "[o]n August 5, 2025, an ICE Deportation Officer sent a travel document request to **ERO Headquarters**

for submission to Iranian authorities.” App. 98 (emphasis added). No DO or other declaration ever claimed that ERO HQ sent the travel document request to Iran. App. 97-100, 118-19. Moreover, none of the declarations identified any actual or expected diplomatic assurance of Petitioner’s acceptance to Iran, nor did the government provide any flight manifests or other evidence indicating that Petitioner’s removal in the reasonably foreseeable future was more than speculative. *Id.*; see *Sun v. Noem*, 2025 WL 2800037, at \*2-3 (S.D. Cal. Sept. 30, 2025) (“Respondents say they are ‘putting together a travel document [TD] request to send to [the] Cambodian embassy,’ and that ‘[o]nce ICE receives the TD, it will begin efforts to secure a flight itinerary for Petitioner.’ The Court finds these kind of vague assertions—akin to promising the check is in the mail—insufficient to meet ICE’s own requirement to show ‘changed circumstances’ or ‘a significant likelihood that the alien may be removed in the reasonably foreseeable future.’”) (record citations omitted); *Hoac v. Becerra*, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025) (“The fact that Respondents intend to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the foreseeable future.”); *Roble v. Bondi*, 2025 WL 2443453, at \*4 (D. Minn. Aug. 25, 2025) (finding insufficient the government’s assertion that ICE “requested third country removal assistance from [Enforcement and

Removal Operations] HQ”); see *Mohamed v. Ashcroft*, 2002 U.S. Dist. Lexis 16179, at \*3 (W.D. Wash. Apr. 15, 2002) (finding that the lack of a definite answer from the foreign consulate indicated that no removal was likely in the reasonably foreseeable future); *Okwilagwe v. INS*, 2002 U.S. Dist. Lexis 3596, at \*9 (N.D. Tex. Mar. 2, 2002) (same).

The district court also based its holding on the claim that the Iranian government is now receiving flights of Iranian citizens who have been ordered removed from the United States. App. 145. The district court also found relevant the government’s representation “that Iran is accepting copies of passports and birth certificates for the purpose of proving Iranian citizenship, which has allowed Iran to issue travel documents” because “Petitioner’s ICE filed contains copies of such documents.” App. 145-46. However, the articles the government cited (App. 41 n.4) indicate that all or most of the recent Iranian deportees were recent arrivals to the United States, and there is no indication in those articles that any of those Iranian deportees lacked an original passport or birth certificate, nor is there any indication that Iran issued travel documents for those deportees from mere copies of the deportees’ passports or birth certificates. Those same articles, however, do indicate that “U.S. authorities arrested 1,710 Iranians crossing the border illegally from Mexico from September 2021 to November 2024,” and that the plan to deport

Iranians is limited to “around 400 Iranians, **most of whom entered the United States illegally, primarily via Mexico.**” (emphasis added). Thus, the Iranians who appear to be part of the recent deportation deal are not similarly situated to Petitioner, who entered the United States more than 40 year ago, lawfully via a student visa, who was subsequently granted permanent residence in the United States and who held that status for more than a decade before losing his permanent residence status and being ordered deported. *See* App. 37-38, 92-93.

The significant differences between the Iranians who have been recently deported and who are slated to be deported soon from the Petitioner in this case are material but were ignored by the district court. It was error for the district court to assume that because Iran has agreed to accept a small percentage of Iranian deportees living in the United States, there is a significant likelihood that they will accept the Petitioner, specifically, in the reasonably foreseeable future. *See Kamyab v. Bondi*, No. 25-CV-389-RSL-MLP, 2025 WL 2918081, at \*5 (W.D. Wash. Aug. 5, 2025) (“Respondents’ reliance on the fact that Iran continues to issue travel documents and to accept the return of its citizens, perhaps at even higher levels this year than in previous years, still says little about the likelihood that Petitioner will be removed given the apparent absence of documentation necessary to obtain

travel documents for him.”) (footnote omitted). This question was a key feature of the release decision in *Kacanic v. Elwood*, No. 02-CV-8019, 2002 WL 31520362 (E.D. Pa. Nov. 8, 2002). In *Kacanic*, the court stated:

The Government also sought to rely on a table showing that the INS has successfully removed aliens to Yugoslavia in the past. **This table is not relevant to the instance case. It does not give any information on the number of aliens that were denied travel papers by Yugoslavia.** See *Sertse–Khama v. Ashcroft*, 215 F. Supp. 2d 37, 46 (D.D.C. 2002) (rejecting similar evidence for lack of information on the number of applicants for travel papers). **Moreover, it lacks any individualized information about any of these aliens. For instance, there is no evidence as to how many of them had criminal histories, or how many of them were accepted despite having lived in the U.S. for more than twenty years, or how many of them lacked a Yugoslavian passport. Without any kind of information that would allow for a meaningful comparison of these removed aliens to the Petitioner's case, the table does not give any indication of whether or not the Petitioner will be removed in the near future.**

Similarly, the Government argued that the lack of any institutional barriers to removal proves that release in this case is not warranted. **Again, however, other aliens having been removed to Yugoslavia in the past is not a credible indication that *this* alien will be removed in the near future.** See *Ablahad v. Ashcroft*, 2002 U.S. Dist. Lexis 17405, at \*3 (N.D. Ill. Sept. 6, 2002) (finding that **evidence that aliens have in the past been deported to petitioner's country is not sufficient to carry the government's burden under *Zadvydas***); *Mohamed*, 2002 U.S. Dist. Lexis 16179 at \*3 (same); *Sertse–Khama*, 215 F. Supp. 2d at \*49 (same).

*Kacanic*, 2002 WL 31520362, at \*4 (bold emphasis added).

Relevant to these errors was the district court's failure to consider the Supreme Court's statement in *Zadvydas* that, "for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *See Zadvydas v. Davis*, 533 U.S. at 701. Petitioner had already been detained in post-order confinement for an aggregate period of 513 days at the time of the district court's decision denying habeas, a period significantly longer than the presumptively reasonable six-month period. Under such circumstances, the district court erred because it did not account for the fact that Petitioner is situated differently from someone who has barely reached six months of post-order confinement. *See Kacanic*, 2002 WL 31520362, at \*3 ("In this case the period of detention is almost double what the Court considered presumptively reasonable. Accordingly, when deciding whether removal is likely in the reasonably foreseeable future the time remaining for the INS to effectuate the Petitioner's removal is relatively short."). In order for Petitioner's detention to remain reasonable, the government must provide substantially more evidence than was provided here of a specific and quickly approaching time period in which that deportation will occur. In this case, that means already having a travel document in hand, or at least a guarantee from

Iran that it will accept Petitioner and will issue a travel document by a date certain in the very near future.

In short, the government produced no concrete evidence of imminent removal, and speculation cannot satisfy its burden under § 241.13 or *Zadvydas*.

**IV. The District Court Misconstrued the Scope of Habeas Relief and the Remedy for Unlawful Detention.**

Section 2241 authorizes review of any detention that contravenes federal statutes or regulations, not only those implicating constitutional rights. 28 U.S.C. § 2241(c)(3) (“in custody in violation of the... laws... of the United States”) (emphasis added). The district court committed reversible legal error by holding that habeas extends only to constitutional defects. *See* App. 147 (“Habeas relief is reserved for errors constitutional in scale.”).

The district court appears to have been aware that it was artificially limiting the scope of habeas relief, as the court later acknowledged that it “could order Petitioner released from detention for failure to follow 8 C.F.R. § 241.13(i)(2)-(3)” before deciding not to do so. App. 148.

The notion that ICE could simply re-detain Petitioner in a “do-over” (*see* App. 148) ignores that the detention itself was unauthorized and void *ab initio*, and the idea that the litigation which challenged Petitioner’s unlawful

detention was itself the remedy for Respondents' unlawful detention of Petitioner is an untenable abuse of discretion.

The district court's claim that "Petitioner has now been adequately provided notice as to the reason for his revocation and detention" is clearly erroneous and without substantial evidence. *See* App. 148. Petitioner still has not received any written notice or decision containing the reasons for the revocation of his release, which is required under 8 C.F.R. § 241.13(g) ("The **HQPDU shall issue a written decision** based on the administrative record, including any documentation provided by the alien, **regarding the likelihood of removal and whether there is a significant likelihood that the alien will be removed in the reasonably foreseeable future under the circumstances.** The HQPDU **shall** provide the decision to the alien, with a copy to counsel of record, by regular mail.") (emphasis added).

Courts uniformly require release when the government detains without satisfying the procedural predicates for custody. *Accord, e.g., Roble v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2443453 (D. Minn. Aug. 25, 2025) (granting habeas and ordering release based on less egregious regulatory violations); *Sarail A. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (same); *Yee S. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2879479 (D. Minn. Oct. 9, 2025) (same); *Constantinovici v. Bondi*, --- F. Supp. 3d ---, 2025 WL

2898985 (S.D. Cal. Oct. 10, 2025) (same); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at \*4 (S.D. Cal. Sept. 15, 2025) (granting habeas and ordering release); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on unlawful redetention claim because “there is no indication that an informal interview was provided”); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE’s failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) (“because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release”); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025), *report and recommendation adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025) (recommending habeas relief based on a variety of regulatory violations similar to those presented by Petitioner); *Pham v. Bondi*, No. 25-CV-1157-SLP (W.D. Okla. Oct. 30, 2025) (recommending habeas relief based on a variety of regulatory violations similar to those presented by Petitioner); *Phan v. Noem*, No. 25-CV-2422-RBM-MSB, 2025 WL 2898977, at \*5 (S.D. Cal. Oct. 10, 2025) (“**The Court's research indicates that every district court, except one, to consider the issue has ‘determined that where ICE fails to**

**follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered.”**) (emphasis added; footnote and citations omitted).

What the district court here did instead is unprecedented. The district court imagined that if habeas were granted, the government would issue a new compliant notice, re-detain Petitioner again, and then start the process over anew. *See* App. 148. Considering the lack of changed circumstances justifying re-detention in Petitioner’s case, this holding would be extraordinarily concerning even if the government had submitted an affidavit stating an intent to pursue such a course. Considering the government never expressed any such intent in this case, the district court’s holdings are a perfect example of why the party presentation doctrine exists. *See United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (“In our adversarial system of adjudication, we follow the principle of party presentation”); *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (stating, *inter alia*, that the party presentation principle applies “in both civil and criminal cases”). The district court abused its discretion by deviating from the party presentation principle to speculate and deny relief based on a mere possibility of the parties engaging in certain actions at some unspecified time in the future.

**V. The District Court Improperly Deferred to Illusory “Foreign-Policy Judgments.”**

The district court stated that it “must give deference to the foreign policy judgments of the Executive” and that it “owes due deference to the Executive’s foreign policy considerations and will not substitute its own or another party’s analysis of the state of the world for the Executive’s in this context.” App. 149. The district court cited no cases supporting these assertions of law. *See id.* Such assertions are contrary to *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Moreover, even if such assertions do not implicate *Loper Bright*, this case concerns ICE’s adherence to federal regulation, not the conduct of foreign affairs or the discretion of the Executive in matters of state. Petitioner is not challenging the Executive’s authority to engage in diplomatic agreements with Iran and foreign policy considerations have nothing to do with the actions challenged in Petitioner’s case. Consequently, no deference is owed to the Executive in the context of this case.

**CONCLUSION**

ICE detained Petitioner without following the procedures that make detention lawful and then defended that failure with speculation and conjecture. The district court compounded those errors by excusing noncompliance, deferring to and accepting unsupported assertions, and

narrowing habeas beyond its text and purpose. The law does not permit detention first and process later. Because the government failed to meet the conditions precedent to lawful custody, the writ must issue.

The judgment must be reversed, the writ granted, and Petitioner ordered released forthwith.

Respectfully submitted,

Dated: November 12, 2025

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### CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 7,468 words, including the parts of the brief exempted by Rule 32(f). This brief also complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Respectfully submitted,

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Fast forward to 2025, and ICE arrested and detained Petitioner on June 11, intending to finally effect his removal from the United States. Petitioner now asserts that his detention is unlawful because: (1) it is punitive and in violation of the Fifth Amendment, (2) the government failed to comply with the procedural requirements of 8 C.F.R. § 241.13(i)(2)–(3), (3) the government can’t demonstrate that Petitioner will likely be removed, (4) he’s complied with his conditions of release, and (4) the government’s alleged violation of the “arbitrary and capricious” standard in 5 U.S.C. § 706(2)(A). Petitioner asks this Court to grant a writ of habeas corpus ordering his immediate release from detention and to grant a declaratory judgment finding that Petitioner is detained pursuant to 8 U.S.C. § 1231(a)(1) and that Petitioner has previously demonstrated to the government’s satisfaction that he is not significantly likely to be removed in the reasonably foreseeable future. Further, Petitioner seeks a declaratory judgment finding both that the government has failed to rebut Petitioner’s showing prior to his re-detention and that he may not be detained again until the government properly rebuts such showing. Petitioner also asks this Court to enjoin the government from deporting and re-detaining Petitioner upon release unless a variety of conditions are met.

### *Legal Standard*

Pursuant to 8 C.F.R. § 241.13(i)(2):

The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. Thereafter, if the alien is not released from custody following the informal interview provided for in paragraph (h)(3) of this section, the provisions of § 241.4 shall govern the alien's continued detention pending removal.

Additionally, 8 C.F.R. § 241.13(i)(3) states:

Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

“Any alien who is convicted of an aggravated felony at any time after admission is deportable.”<sup>1</sup> Further, an individual convicted of rape or sexual abuse of a minor is considered to have committed an “aggravated felony[.]”<sup>2</sup>

Under normal circumstances, the government needs to remove an alien within 90 days of the issuance of a final order of removal.<sup>3</sup> Upon failure to remove within 90 days, the alien is subject to supervision,<sup>4</sup> but is still removable and “may be detained beyond the removal period.”<sup>5</sup> While detainees may not be detained indefinitely, the government may hold them until detention becomes unreasonable, “measur[ing] reasonableness primarily in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal.”<sup>6</sup> Further, this Court will “give expert agencies decisionmaking leeway in

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<sup>1</sup> 8 U.S.C. § 1227(a)(2)(A)(iii).

<sup>2</sup> 8 U.S.C. § 1101(a)(43)(A).

<sup>3</sup> 8 U.S.C. § 1231(a)(1)(A).

<sup>4</sup> 8 U.S.C. § 1231(a)(3).

<sup>5</sup> 8 U.S.C. § 1231(a)(6).

<sup>6</sup> *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

matters that invoke their expertise.”<sup>7</sup> This Court will “listen with care when the Government’s foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue[.]”<sup>8</sup>

### *Analysis*

#### **I. Failure to comply with 8 C.F.R. § 241.13(i)(2)–(3) is at most harmless error.**

The harmless error standard applies in deportation<sup>9</sup> and administrative cases.<sup>10</sup> Accordingly, it is Petitioner’s burden to show that the government’s failure to abide by its own regulations prejudiced him.<sup>11</sup> The Court finds that Petitioner has failed to carry that burden.

Petitioner claims “there was zero compliance with 8 C.F.R. § 241.13(i)(2)–(3)[.]”<sup>12</sup> In its Sur-reply (Dkt. 18), the government states that it is unable to verify that Petitioner received a Notice of Revocation of Release, as required by 8 C.F.R. § 241.13(i)(3). Respondents do represent, though, that on the same day that Petitioner was detained, he was interviewed, provided the reasons for his detention, and was told that if he is not able to be removed to Iran, the government is considering the possibility of removing him to a

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<sup>7</sup> *Id.* at 700.

<sup>8</sup> *Id.*

<sup>9</sup> *Nazaraghaie v. I.N.S.*, 102 F.3d 460, 465 (10th Cir. 1996) (citations omitted).

<sup>10</sup> *WildEarth Guardians v. Bureau of Land Management*, 870 F.3d 1222, 1238–39 (citations omitted).

<sup>11</sup> *See Bar MK Ranches v. Yuetter*, 994 F.2d 735, 740 (10th Cir. 1993) (holding that errors in administrative proceedings do not call for reversal without plaintiffs demonstrating that such errors produced prejudice).

<sup>12</sup> *Reply*, (Dkt. 16), at 7.

third country.<sup>13</sup> Further, on June 30, 2025, less than three weeks after he was detained, Petitioner sat for an interview related to a review of his detention where he was able to submit information concerning his custody.<sup>14</sup> At this hearing, he did not provide any argument or evidence about his custody and potential removal.<sup>15</sup> The Court finds that the government did substantially comply with C.F.R. § 241.13(i)(2)–(3). Petitioner has provided conclusory statements about not recalling the government’s compliance with the regulations, while the government has provided sworn statements of officers and even a copy of Petitioner’s responses to an informal interview conducted after his detention, evidencing substantial compliance with the law.<sup>16</sup> While the government failed to provide a Notice of Revocation of Release to Petitioner, the Court finds for the following reasons that such failure is harmless error, and even then, such error has been mitigated by the government’s substantial compliance with the law and cured by the opportunities Petitioner has had to contest his detention, both in front of ICE and this Court.

Throughout the litigation of the matter in front of the Court sitting in habeas, Petitioner has been represented by counsel, has been provided notice for the basis of his detention, and has been heard by both this Court and the government concerning his arguments about the changed circumstances underlying his detention. This process has effectively cured any administrative deficiencies stemming from the government’s failures

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<sup>13</sup> Sur-reply (Dkt. 18), at .

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 3.

<sup>16</sup> Not. Alien. (Dkt. 18, Ex. 2), at 1–7.

to comply with 8 C.F.R. § 241.13(i)(2), which requires that Petitioner be notified for the reasons behind the revocation of his release, be given an “initial informal interview” so that Petitioner can “respond to the reasons for revocation stated in the notification[,]” and then be given the opportunity to present evidence rebutting the government’s belief there is a significant likelihood his removal can be effectuated.

Petitioner has in this case been provided an opportunity to present evidence, respond to the government’s arguments, and has submitted a robust written record for the Court to consider. And the Court has conducted a de novo review of the legal questions presented.

Through briefing, it has been made abundantly clear that Petitioner is removable, owing to his myriad sexual crimes.<sup>17</sup> Further, Petitioner never appealed his original order of removal.<sup>18</sup> The government has also provided convincing evidence that potential for removal exceeds the “no significant likelihood” standard that 8 C.F.R. § 241.13(i)(2) requires in order for a detainee to be released following a revocation of an OOS. On this point, the government represents that on August 5, 2025, it sent a request for travel documents to the appropriate Iranian authorities in order to begin the process of removal.<sup>19</sup> The government also represents that Iran is accepting “flights of Iranian citizens who have been ordered removed from the United States.”<sup>20</sup> Finally, the government represents that Iran is accepting copies of passports and birth certificates for the purpose of proving Iranian

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<sup>17</sup> Resp. Pet. (Dkt. 15), at 2.

<sup>18</sup> Pet. (Dkt. 1), at 1.

<sup>19</sup> Resp. Pet. (Dkt. 15), at 4.

<sup>20</sup> *Id.*

citizenship, which has allowed Iran to issue travel documents.<sup>21</sup> Petitioner’s ICE file contains copies of such documents.<sup>22</sup> Accordingly, the government represents that it “believe[s] removal can be effectuated in the reasonably foreseeable future.”<sup>23</sup>

Taken together, Petitioner has been fully capable of making robust argument against his detention. Accordingly, the Court finds that even if the government failed to comply with § 241.13(i)(2)–(3), such failure has not prejudiced Petitioner.

**II. Even if the government failed to comply with 8 C.F.R. § 241.13(i)(2)–(3), and such noncompliance were prejudicial, the Court would not be able to issue a writ of habeas corpus as an appropriate remedy.**

Petitioner has presented the Court a variety of cases purportedly finding that failure to adhere to 8 C.F.R. § 241.13(i)(2) or (3) requires granting a writ of habeas corpus.<sup>24</sup> None of these cases are binding upon this Court, nor does the Court find them particularly applicable to this case. In the first case Petitioner cites for this proposition, *Roble v. Bondi*, the court found that “the Government plainly failed to meet its burden to show that, ‘on account of changed circumstances ... there is a significant likelihood that [the alien] may be removed in the foreseeable future[.]’”<sup>25</sup> This was a serious substantive defect in the government’s detention of the petitioner in that case, beyond a mere failure to follow the regulation to a T—a substantive defect not present here. Next, Petitioner cites *Sarail A v.*

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<sup>21</sup> Decl. Arthur Hawthorne, III (Dkt. 15, Ex. 5), at 1–2.

<sup>22</sup> *Id.* at 1.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *See* Pet.’s Resp. (Dkt. 16), at 5–6.

<sup>25</sup> Case No. 25-cv-3196, 2025 WL 2443453, at \*5 (D. Minn. Aug. 25, 2025).

*Bondi*, which found that *in addition to* failing to comply with 8 C.F.R. § 241.13(i)(3), the government failed to consider the factors in § 241.13(f) to make the determination that the alien’s removal would be significantly likely at some point in the reasonably foreseeable future.<sup>26</sup> In *Yee S. v. Bondi*, the Court found that the government’s representations as to changed circumstances surrounding the petitioner’s removal were lacking, in that the government did not even indicate from which country it was seeking travel documents.<sup>27</sup> This case is distinguishable from *Yee S.* in light of the government here providing far more detail related to its plans for Petitioner’s removal. Petitioner further provides a few cases, starting with *Constantinovici v. Bondi*, that find that ICE’s regulatory violations are equivalent to a Fifth Amendment violation and are prejudicial such that they require release.<sup>28</sup> For reasons both previously and subsequently stated, this Court disagrees with such conclusions, and cannot agree that mere failure to comply with such regulations does not support an automatic writ of habeas corpus.<sup>29</sup>

Habeas relief is reserved for errors constitutional in scale.<sup>30</sup> “The Supreme Court [has] made clear that error regarding one’s confinement does not mean that release is the

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<sup>26</sup> Case No. 25-cv-2144, 2025 WL 2533673, at \*3–4 (D. Minn. Sept. 3, 2025).

<sup>27</sup> No. 25-cv-02732-JMB-DLM, ECF No. 13, at \*8 (D. Minn. Oct. 9, 2025).

<sup>28</sup> No. 25-cv-02405-RBM-AHG, ECF No. 15, at \*9 (S. D. Cal. Oct. 10, 2025).

<sup>29</sup> *See Nguyen v. Noem*, Case No. 25-CV-057-H, 2025 WL 2737803, at \*6 (N. D. Tex. Aug. 10, 2025).

<sup>30</sup> *See Sunal v. Large*, 332 U.S. 174, 179 (1947) (“It is plain, however, that the writ is not designed for collateral review of errors of law committed by the trial court—the existence of any evidence to support the conviction, irregularities in the grand jury procedure, departure from a statutory grant of time in which to prepare for trial, and other errors in trial procedure which do not cross the jurisdictional line.”).

appropriate remedy.”<sup>31</sup> Petitioner has failed to show that the appropriate remedy for ICE’s regulatory violations is a writ of habeas corpus. There is no relief that this Court could offer, since Petitioner has now been adequately provided notice as to the reason for his revocation and detention, he has been provided a forum to rebut the reasons for his detention, and it is still the case that Petitioner is statutorily removable. Every procedural wrong that Plaintiff could conceivably allege as a result of the government’s violations of 8 C.F.R. § 241.13(i)(2)–(3) has been righted by the very existence of this habeas proceeding. At best, the Court could order Petitioner released from detention for failure to follow 8 C.F.R. § 241.13(i)(2)–(3), but that does not change the fact that Petitioner is still removable and could promptly be served with a notice of revocation, detained, and provided a brief interview. A do-over in this case would be wasteful.

### **III. Petitioner has not suffered a Fifth Amendment violation.**

An individual may not be detained punitively without adequate due process after a criminal proceeding.<sup>32</sup> To the extent that Defendant claims habeas relief is an appropriate remedy for his alleged Fifth Amendment injuries, the Court cannot authorize relief, as it is unclear what those injuries are at this point. Petitioner has hinged his unlawful detention argument on this Court finding that Petitioner sufficiently rebutted the government’s contention that he will be removed from the United States in the reasonably foreseeable

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<sup>31</sup> *Nguyen*, 2025 WL 2737803, at \*6 (discussing the holding in *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005), which held that a state’s defective parole system does not require release, but rather renewed review for parole eligibility).

<sup>32</sup> *Zadvydas*, 533 U.S. at 690.

future.<sup>33</sup> This is a steep hill for Petitioner to climb, and he has failed to do so. Again, this Court must give deference to the foreign policy judgments of the Executive. While Petitioner claims it is unlikely that Iran will accept removed aliens from the United States in light of kinetic operations against the Islamic Republic in the summer of 2025, a government official has provided a sworn statement to the opposite, based on his reasoned judgment.<sup>34</sup> Further, the government also represents that it has taken concrete steps towards attempting to remove Petitioner.<sup>35</sup> Again, this Court owes due deference to the Executive's foreign policy considerations and will not substitute its own or another party's analysis of the state of the world for the Executive's in this context.<sup>36</sup> If anything, the *government* has shown that there are changed circumstances that have made removal more likely than in the first round of Petitioner's attempted removal in 2015–16. Petitioner has thus failed to meet his burden and cannot demonstrate that his detention is punitive, rather than a lawful attempt to effectuate removal.<sup>37</sup>

Since this, then, is civil detention without any express intent to punish Petitioner, to prevail on his Fifth Amendment claim, Petitioner must provide a showing to the Court “that

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<sup>33</sup> Pet. (Dkt. 1), at 19.

<sup>34</sup> Decl. Arthur Hawthorne, III (Dkt. 15, Ex. 5), at 1–2.

<sup>35</sup> *Id.* at 1.

<sup>36</sup> *Zadvydas*, 533 U.S. at 700.

<sup>37</sup> In Petitioner's Reply (Dkt. 16), at 4, Petitioner claims that ICE's admission that Petitioner was re-detained because of his being a sex offender is an admission that his detention is punitive. The Court disagrees, as his past conviction is the statutory basis of his removal on account of a conviction of an aggravated felony. Further, to the extent that Petitioner was singled out because of his past crimes against children, it still does not strike the Court as “punitive” if the government chooses to prioritize the removal of such aliens.

the conditions are not ‘rationally related to a legitimate nonpunitive governmental purpose’ or that the conditions ‘appear excessive in relation to that purpose.’”<sup>38</sup> Petitioner has failed to make such a showing. He has stated in passing that Petitioner is currently detained in “a facility designed to punish convicted criminals” and that his “conditions of confinement are indistinguishable from those of convicted criminals.”<sup>39</sup> He then cites a document from the Department of Homeland Security, by all accounts unrelated to Petitioner’s particular case, that talks about the unpleasant conditions of prison and urges certain aliens to self-deport.<sup>40</sup> A sentence about the place of detention and the citation to a random DHS document do not constitute a showing that Petitioner’s detention is either not rationally related to nonpunitive purposes or excessive in relation to whatever purpose it may serve. Without (a lot) more factual development, Petitioner cannot make a showing satisfactory to this Court to demonstrate his Fifth Amendment rights have been injured.

**IV. Petitioner has failed to adequately explain any basis upon which this Court may grant declaratory relief.**

Petitioner asks for a declaratory injunction on a variety of matters in his Petition, but otherwise fails to explain to the Court in sufficient detail why such relief is warranted or on what basis the Court should grant it. However, it seems apparent already that Petitioner is detained pursuant to 8 U.S.C. § 1231(a)(1), and the government makes no

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<sup>38</sup> *Betancourt Barco v. Price*, 457 F. Supp. 3d 1088, 1098 (D. N. M. 2020) (citing *Kinglsey v. Hendrickson*, 576 U.S. 389, 398 (2015)).

<sup>39</sup> Pet. (Dkt. 1), at 2–3.

<sup>40</sup> *Id.* at 12–13.

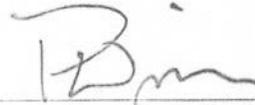
effort to challenge that. That fact does not have any apparent bearing on the outcome of this case, though, since re-detention is still permissible under the statute.

Petitioner then asks this Court to declare that Petitioner has once before demonstrated to the government's satisfaction that there is no significant likelihood that he can be removed in the reasonably foreseeable future and that Respondent's previously failed to rebut that showing. But as previously stated, the Court finds that Respondent has now made a convincing showing that Petitioner can be removed to Iran in the reasonably foreseeable future. A declaratory judgment is thus improper.<sup>41</sup>

### *Conclusion*

For the foregoing reasons, Petitioner's Petition (Dkt. 1) is **DENIED**. A separate judgment will follow.

IT IS SO ORDERED this 31st day of October 2025.



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PATRICK R. WYRICK  
UNITED STATES DISTRICT JUDGE

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<sup>41</sup> *State Farm Mut. Auto. Ins. Co. v. Mid-Continent Cas. Co.*, 518 F.2d 292, 296 (10th Cir. 1975) (“[A] declaratory judgment should not be entered unless it disposes of a controversy and serves a useful purpose.”).

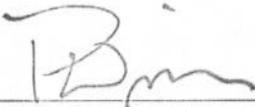
IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

BEKHAM BAHADORANI, )  
)  
Petitioner, )  
v. ) Case No. CIV-25-1091-PRW  
)  
PAMELA BONDI, In Her Official )  
Capacity as Attorney General, *et al.*, )  
)  
Respondents. )

**JUDGMENT**

In accordance with the Court's Order entered this date, the Petition for Writ of Habeas Corpus is **DENIED**. This judgment fully and finally resolves all claims and terminates this civil action.

**ENTERED** this 31st day of October 2025.

  
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PATRICK R. WYRICK  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I, Nico Ratkowski, hereby certify that all other parties to this litigation are represented by attorneys.

Respectfully submitted,

Dated: November 12, 2025

/s/ Nico Ratkowski  
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